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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, OCTOBER 12, 2001

APPLICATION OF VERIZON  
VIRGINIA INC. F/K/A BELL  
ATLANTIC - VIRGINIA, INC.

CASE NO. PUC990101

For approval of its Network  
Services Interconnection Tariff,  
SCC-Va.-No. 218

ORDER

On December 21, 2000, Verizon Virginia Inc. f/k/a Bell Atlantic - Virginia, Inc. ("Verizon Virginia"), filed with the State Corporation Commission ("Commission") a Joint Petition for Approval of Settlement Agreement Addressing Collocation Rates, Terms, and Conditions ("Settlement Agreement") on behalf of itself, AT&T Communications of Virginia, Inc. ("AT&T"), Sprint Communications Company of Virginia, Inc. ("Sprint"), and WorldCom Inc. ("WorldCom") (collectively, the "Settlement Agreement Parties"). The Settlement Agreement claims to resolve all of the pricing issues arising from Verizon Virginia's proposed Network Services Interconnection Tariff, SCC-Va.-No. 218 ("218 Collocation Tariff"), and many non-price terms and conditions. There are several motions regarding the 218 Collocation Tariff and the Settlement Agreement pending before the Commission. The Settlement Agreement Parties request that the Commission resolve certain non-pricing issues and defer

certain cageless collocation issues pending further rulings by the Federal Communications Commission ("FCC") or courts. The Settlement Agreement Parties request that the Commission approve the Settlement Agreement without modification.

Also in this proceeding, Verizon Virginia filed tariff revisions with the Commission on September 12, 2001, and September 28, 2001 ("September 12 and 28, 2001, tariff revisions"), to introduce a new collocation service alternative and, according to Verizon Virginia, to comply with a recent order of the FCC.

Verizon Virginia initiated this proceeding on May 28, 1999, when it filed its proposed 218 Collocation Tariff to be effective on July 28, 1999. Verizon Virginia stated that the 218 Collocation Tariff sets forth the terms, conditions, and pricing under which it provides collocation services to requesting competitive local exchange carriers ("CLECs") for the purpose of local interconnection and access to unbundled network elements pursuant to § 251 of the Telecommunications Act of 1996 (the "Act").<sup>1</sup> On June 23, 1999, the Commission Staff (the "Staff") filed a motion asserting that, upon its initial analysis, contrary to the requirements of § 251(c)(6) of the

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<sup>1</sup> Verizon Virginia represented that the rates and charges in the 218 Collocation Tariff were developed in accordance with the pricing methodology established by the Commission in Commonwealth of Virginia ex rel. State Corporation Commission, Ex Parte: To determine prices Bell-Atlantic-Virginia, Inc. is authorized to charge Competitive Local Exchange Carriers in accordance with the Telecommunications Act of 1996 and applicable State law, Case No. PUC970005, 1999 S.C.C. Ann. Rept. 225.

Act, certain of the rates, terms, and conditions proposed may not be just, reasonable, and nondiscriminatory. The Staff requested that a proceeding be initiated to investigate this tariff, that CLECs be provided an opportunity to comment, and that the tariff be permitted to go into effect on an interim basis, subject to refund and/or modification.

On June 25, 1999, the Commission issued an Order Accepting Tariff on Interim Basis and Opening Investigation. The tariff went into effect June 28, 1999, on an interim basis, subject to refund and/or modification. The Commission directed Verizon Virginia to comment on whether the 218 Collocation Tariff complies with the Act, FCC requirements, and the Commission's determination in Case No. PUC970005, and whether such a filing reviewed outside an arbitration proceeding initiated under § 252 of the Act must or should comply with the Act and FCC requirements. Interested parties objecting to certain terms were encouraged to propose in comments alternative tariff language they deemed appropriate. Verizon Virginia filed comments in support of its application, while other parties filed comments in opposition to various portions of the tariff.<sup>2</sup>

On October 27, 1999, the Staff filed its Staff Report. The Staff recommended that the Commission adopt the Staff's revised

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<sup>2</sup> Comments in opposition to the 218 Collocation Tariff were filed by AT&T, WorldCom, ACI Corp.-Virginia, Cavalier Telephone LLC ("Cavalier"), Covad Communications Company, Focal Communications Corporation, KMC Telecom of Virginia, Inc. ("KMC"), Network Access Solutions ("Network Access"), NorthPoint Communications, Rhythms Links, Inc ("Rhythms Links"), and SBC National, Inc.

interim rates for six collocation rate elements. The Staff also stated that Verizon Virginia should be allowed to file a cageless collocation construction charge to allow it to recover appropriate nonrecurring conditioning costs and that Verizon Virginia should be required to modify the tariff to reflect only the cost of reasonable security measures. The Staff determined that, overall, the rates in the 218 Collocation Tariff are not based on Virginia-specific costs and, in certain instances, are overstated. In its report, the Staff stated that ideally Verizon Virginia should be required to base all its 218 Collocation Tariff rates on state-specific cost support and such costs should be forward-looking. However, the Staff recommended that, at a minimum, Verizon Virginia should be required to modify its cost studies and support data as recommended by the Staff. In addition, the Staff recommended that Verizon Virginia be required to modify its tariff to comply with the Staff's recommendations regarding certain non-pricing issues including standard provisional intervals, verification of space availability, forecasting requirements, capacity constraints, reservation of space, minimum separation distances, additional space, and denial of space. Further, the Staff recommended that interested parties should be required to negotiate remaining non-pricing issues with Verizon Virginia. Verizon Virginia and several other parties filed comments on the Staff Report.<sup>3</sup>

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<sup>3</sup> Comments on the Staff Report were filed by Advanced Telecom, Inc., ALLTEL

On May 17, 2000, and November 21, 2000, Verizon Virginia filed revisions to the 218 Collocation Tariff that it claimed were necessary to comply with recent FCC rulings. The Commission allowed these revisions to go into effect on an interim basis and requested comments on the tariff revisions. The Commission received comments from interested parties.<sup>4</sup> On October 20, 2000, Cavalier filed a motion requesting the Commission adopt the recommendations contained in the Staff Report on an expedited basis and investigate additional issues raised. This motion is pending before the Commission.

As noted above, the Settlement Agreement was filed with the Commission on December 21, 2000. On February 23, 2001, the Commission issued an Order requesting comments on specific questions regarding the settlement proposed by the Settlement Agreement Parties and its effect on this proceeding. The Commission received comments from ALLTEL, Broadslate Networks of Virginia, Inc. ("Broadslate"), and Cavalier, which highlighted the fact that they had not been parties to the settlement and did not have input on the rates, terms, and conditions compromised on by the Settlement Agreement Parties. In particular, these comments objected to the stipulation found in the Settlement Agreement that CLECs would not be entitled to any

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Communications, Inc. ("ALLTEL"), AT&T, Cavalier, Cox Virginia Telecom, Inc., KMC, Rhythms Links, and WorldCom.

<sup>4</sup> Comments were filed by ALLTEL, AT&T, Cox, DEICA Communications, Network Access, Rhythms Links, and WorldCom on the May 17, 2000, revisions. Comments were filed by ALLTEL and Sprint on the November 21, 2000, revisions.

refunds or true-ups resulting from the differences between the interim tariffed rates and the rates set forth in the Settlement Agreement. ALLTEL, Cavalier, and Broadslate argued they should not be bound by the provisions of the Settlement Agreement.

In support of the Settlement Agreement, Verizon Virginia countered that the Settlement Agreement took seven months of difficult negotiation, settled all of the collocation rates and a number of non-price issues, covered seven states, and the Delaware and Pennsylvania Commissions have approved the Settlement Agreement. Verizon Virginia argued that the Settlement Agreement is a fair compromise on complex and contentious issues and is in the public interest. Verizon Virginia stated that the comments filed by ALLTEL, Broadslate, and Cavalier did not present evidence that the Settlement Agreement is unreasonable or not in the public interest. In addition, Verizon Virginia argued that approval of the Settlement Agreement will avoid the time, expense, and uncertainty involved in litigation in this matter.

On May 16, 2001, ALLTEL filed a motion for leave to file additional comments and comments on the Settlement Agreement and Verizon Virginia's response to the comments of ALLTEL, Broadslate, and Cavalier. On June 4, 2001, Verizon Virginia filed a motion requesting that the Commission deny ALLTEL's motion as untimely and only argumentative and that the

Commission strike ALLTEL's additional comments. These motions are pending before the Commission.

On July 16, 2001, Cavalier filed a motion for leave to file supplemental comments and proposed supplemental comments on the Settlement Agreement. On October 9, 2001, the Settlement Agreement Parties filed a joint motion for leave to file a response to Cavalier's supplemental comments and a joint response. These motions are pending before the Commission.

As noted, on September 12, 2001, and September 28, 2001, Verizon Virginia filed additional tariff revisions. The September 12, 2001, filing introduces Microwave Collocation, a new collocation service alternative. The proposed effective date of these revisions is October 12, 2001. According to Verizon Virginia, its September 28, 2001, filing is being made to comply with the FCC's order in CC Docket No. 98-147, released August 8, 2001. The proposed effective date of these revisions is October 28, 2001.

NOW THE COMMISSION, upon consideration of the 218 Collocation Tariff and the revisions thereto, the Staff Report, the Settlement Agreement, and all comments and motions filed in this proceeding, is of the opinion and finds that the Settlement Agreement should be rejected; that Verizon should be encouraged to include all interested parties in settlement negotiations on pricing and non-pricing issues in this proceeding; that Verizon,

along with all interested parties,<sup>5</sup> should identify and attempt to resolve all non-pricing issues on or before December 14, 2001, and on such date file with the Commission a stipulation of those non-pricing issues which have been resolved and those which remain outstanding; and that, in the event that negotiations between the parties on cost issues are not productive, Verizon Virginia should file state-specific cost studies with the Commission on or before January 15, 2002.

We will deny Cavalier's motion requesting the Commission adopt the recommendations contained in the Staff Report and investigate certain issues raised by the tariff. We believe, however, that the directives contained within this Order may adequately address Cavalier's concerns in this matter. We will grant ALLTEL's motion for leave to file additional comments on the Settlement Agreement and Verizon Virginia's response to comments filed on the Settlement Agreement. We will deny Verizon Virginia's motion to strike. We will also grant Cavalier's motion for leave to file supplemental comments on the Settlement Agreement. In addition, we will grant the Settlement Agreement Parties' motion to file a joint response to Cavalier's supplemental comments.

Further, the 218 Collocation Tariff and the revisions subsequently filed on May 17, 2000, and November 21, 2000, will

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<sup>5</sup> At a minimum, all interested parties that have submitted comments in this matter should be encouraged and permitted to participate in settlement negotiations.

remain in effect on an interim basis, subject to refund and/or modification. We will accept the September 12 and 28, 2001, tariff revisions effective October 12, 2001, and October 28, 2001, respectively, on an interim basis, subject to refund and/or modification.

Since the Settlement Agreement attempts to resolve many of the issues regarding the 218 Collocation Tariff, which sets forth the terms, conditions, and pricing under which Verizon Virginia provides collocation services to CLECs for local interconnection and access to unbundled network elements, CLECs have a keen interest in its provisions. Although Verizon Virginia, AT&T, Sprint, and WorldCom were able to settle many of the issues in this matter, CLECs such as ALLTEL, Broadslate, and Cavalier were not parties to the Settlement Agreement and object to its application to all parties to this proceeding. We agree with these CLECs that such a Settlement Agreement should not bind those that were not invited to participate in the negotiations.<sup>6</sup> We do not consider this a true settlement.

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<sup>6</sup> We note that the Settlement Agreement Parties, in their October 9, 2001, joint response to Cavalier's supplemental comments on the Settlement Agreement, argue in part that the Settlement Agreement dramatically lowers the cost of collocation for all CLECs, including Cavalier, and substantially reduces risk and uncertainty for competitors. If this indeed is the case, we are unclear as to why the other CLECs were not, at a minimum, briefed on the potential impact of the Settlement Agreement before it was filed in Virginia in an effort to gain support or limit potential opposition. There is nothing that prevents the Settlement Agreement Parties from using the Settlement Agreement as a proposal with other CLECs operating in Virginia, such as Cavalier, in the further negotiations required by this Order.

Therefore, we will encourage all interested parties in Virginia to work toward settlement of the disputed collocation pricing issues as well as the non-pricing issues arising from the 218 Collocation Tariff. Verizon Virginia should initiate these negotiation efforts; however, the Staff will be available to assist in the identification and resolution of these issues if the parties so request. We hope that the Settlement Agreement Parties will not abandon their positions on the previously identified non-pricing issues that have been resolved. We will require the parties to identify all non-pricing issues and on or before December 14, 2001, file with the Commission a stipulation containing those non-pricing issues which have been resolved and those which remain outstanding. The Commission may address such issues prior to, or separate from, any determinations on cost issues.

The Commission recognizes that it may not be possible to get all interested parties to agree to a settlement or even to participate in the process. Verizon Virginia and other interested parties are not prevented from submitting another proposed settlement that does not include all parties to this case. However, any proposed settlement will be evaluated in light of its impact on all CLECs.

If negotiations on the pricing issues do not result in a settlement, the Commission will require that on or before January 15, 2001, Verizon Virginia file state-specific cost

studies in this proceeding. We are cognizant of the Staff's concerns identified in the Staff Report regarding Verizon Virginia's cost studies previously submitted in this case and, in particular, agree that state-specific costs should be used whenever possible. Therefore, we will require Verizon Virginia to submit new or revised cost studies using state-specific costs, where possible, to support the collocation rate elements as set forth in the 218 Collocation Tariff.

The Commission previously found in Case No. PUC970005 that prices for interconnection and network elements should be based on their total, forward-looking, long run incremental costs to meet the requirements of the Act. If the Commission is to determine that Verizon Virginia's collocation prices meet the requirements of the Act, then these prices should be determined in the same manner. Specifically, collocation costs should reflect the most efficient method that can be reasonably employed in the near future for partitioning and provisioning space, power, and cross connects at Verizon Virginia's premises. Further, we shall require that these costs include only those that benefit, and are caused by, customers of collocation space.

Moreover, we strongly recommend that Verizon Virginia incorporate other Staff pricing recommendations and concerns found in the Staff Report in Verizon Virginia's resubmitted cost studies.

The Commission further finds that the September 12 and 28, 2001, tariff revisions should be accepted on an interim basis subject to refund and/or modification. The Commission will not request comments on these revisions at this time as we will require the parties to include any issues arising from these revisions into any settlement discussions and/or stipulation on non-pricing issues.

Accordingly, IT IS ORDERED THAT:

(1) Cavalier's October 20, 2000, motion to adopt the Staff Report and to investigate additional issues raised by the tariff is hereby denied.

(2) ALLTEL's May 16, 2001, motion for leave to file additional comments on the Settlement Agreement and Verizon Virginia's response to comments filed on the Settlement Agreement are hereby granted.

(3) Verizon Virginia's June 4, 2001, motion to strike ALLTEL's comments is hereby denied.

(4) Cavalier's July 16, 2001, motion for leave to file supplemental comments on the Settlement Agreement is hereby granted.

(5) The Settlement Agreement Parties' October 9, 2001, joint motion for leave to file a response to supplemental comments of Cavalier is hereby granted.

(6) The Settlement Agreement filed December 21, 2000, is hereby rejected.

(7) Verizon Virginia is encouraged to include all interested parties in negotiations, as described herein, toward settlement of the disputed collocation pricing issues, if possible, and non-pricing issues arising from the 218 Collocation Tariff.

(8) The parties shall identify all non-pricing issues, and on or before December 14, 2001, shall file with the Commission a stipulation containing those non-pricing issues that have been resolved and those that remain outstanding.

(9) Should negotiations on the pricing issues prove to be ineffective, the Commission will require that Verizon Virginia file state-specific cost studies on January 15, 2002. These cost studies shall meet our requirements as described herein.

(10) Verizon Virginia's September 12 and 28, 2001, tariff revisions are hereby accepted on an interim basis, effective October 12, 2001, and October 28, 2001, respectively, subject to refunds of collocation charges and/or modification in terms and conditions. Any issues arising from these revisions shall be included in any settlement negotiations and/or the stipulation on non-pricing issues filed with the Commission.

(11) Verizon Virginia shall serve upon all parties having previously filed comments, as well as the Office of the Attorney General, copies of its September 12 and 28, 2001, tariff revisions within ten (10) days from the date of this Order, if it has not already done so. Verizon Virginia shall promptly

furnish a copy of its September 12 and 28, 2001, tariff revisions to any person requesting a copy. Requests may be directed to Lydia R. Pulley, Vice President, General Counsel, and Secretary, Verizon Virginia Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219-2441.

(12) The 218 Collocation Tariff and the revisions subsequently filed on May 17, 2000, and November 21, 2000, shall remain in effect on an interim basis, subject to refund and/or modification.

(13) This matter is continued for further orders of the Commission.